

1978, as amended, or which is otherwise subject to a prohibition on public disclosure under law.

PART 2641—POST-EMPLOYMENT CONFLICT OF INTEREST RESTRICTIONS

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SOURCE: 56 FR 3963, Feb. 1, 1991, unless otherwise noted.

Subpart A—General Provisions

§ 2641.101 Definitions.

The following terms are defined for purposes of this part:

Agency includes any department, independent establishment, commission, administration, authority, board, or bureau of the United States, and includes a Government corporation. 18 U.S.C. 202(e)(1); 5 U.S.C. 105.

Department means one of the executive departments enumerated in 5 U.S.C. 101.

Designated agency ethics official means an officer or employee who is designated by the head of an agency to coordinate and manage an agency's ethics program in accordance with § 2638.203 of this subchapter. 5 CFR 2638.202.

Employee means any officer or employee of the executive branch as that term is defined in this section. Unless otherwise indicated, the term does not include the President or the Vice President. 18 U.S.C. 202(c). It does not include an individual performing services for the United States as an inde-

pendent contractor under a personal services contract or an enlisted member of the armed forces as defined in 5 U.S.C. 2101(2), 18 U.S.C. 202(a). Unless otherwise indicated, the term encompasses senior employees, very senior employees, and special Government employees as defined in this section.

Executive branch includes each executive agency as defined in 5 U.S.C. 105, other than the General Accounting Office, and also includes any other entity or administrative unit in the executive branch. 18 U.S.C. 202(e)(1).

Former employee, former senior employee, or former very senior employee means one who was, and is no longer, an employee, senior employee, or very senior employee.

Senior employee means an employee, other than a very senior employee, who is:

(1) Employed in a position for which the rate of pay is specified in or fixed according to 5 U.S.C. 5311–5318 (the Executive Schedule);

(2) Employed in a position for which the basic rate of pay, exclusive of any locality-based pay adjustment under 5 U.S.C. 5304 (or any comparable adjustment pursuant to interim authority of the President) is equal to or greater than the rate of basic pay payable for Level V of the Executive Schedule (including any such position in the Senior Executive Service or other SES-type systems, e.g., the Senior Foreign Service);

(3) Appointed by the President to a position under 3 U.S.C. 105(a)(2)(B);

(4) Appointed by the Vice President to a position under 3 U.S.C. 106(a)(1)(B);

(5) Employed in a position which is held by an active duty commissioned officer of the uniformed services who is serving in a grade or rank for which the pay grade (as specified in 37 U.S.C. 201) is pay grade O–7 or above; or

(6) Detailed to any such position.

Special Government employee includes an officer or employee of an agency who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed 130 days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis. See 18 U.S.C. 202(a).

Very senior employee means an employee who is:

- (1) Serving in the position of Vice President of the United States;
- (2) Employed in a position at a rate of pay payable for Level I of the Executive Schedule;
- (3) Employed in a position in the Executive Office of the President at a rate of pay payable for Level II of the Executive Schedule;
- (4) Appointed by the President to a position under 3 U.S.C. 105(a)(2)(A);
- (5) Appointed by the Vice President to a position under 3 U.S.C. 106(a)(1)(A); or
- (6) Detailed to any such position.

[56 FR 3963, Feb. 1, 1991, as amended at 59 FR 34756, July 7, 1994]

Subpart B—Substantive Provisions

§ 2641.201 One-year restriction on a former senior employee's representations to employees of former agency concerning matter, regardless of prior involvement.

(a) *Basic Prohibition of 18 U.S.C. 207(c)*. For one year after service in a "senior" position terminates, no former "senior" employee may knowingly make, with the intent to influence, any communication to or appearance before an employee of a department or agency in which he served in any capacity during the one-year period prior to termination from "senior" service, if that communication or appearance is made on behalf of any other person (except the United States) in connection with any matter on which he seeks official action by any employee.

(b) *Applicability*. 18 U.S.C. 207(c) applies to all former "senior employees" as defined in § 2641.101 of this part. Certain individuals who served in "very senior" positions are subject to the one-year bar set forth in section 207(d) in lieu of that set forth in section 207(c). See definition of "very senior employee" in § 2641.101.

(1) *Special Government Employees*. 18 U.S.C. 207(c) does not apply to an individual as a result of service as a special Government employee unless the individual:

- (i) Served in a senior employee position while serving as a special Government employee; and

- (ii) Served 60 or more days as a special Government employee during the one-year period before terminating service as a senior employee.

(2) *Exemption from 18 U.S.C. 207(c)*. 18 U.S.C. 207(c) does not apply to an individual as a result of service in a senior position if that position has been exempted from section 207(c) pursuant to the waiver procedures set forth in § 2641.201(d) of this part.

(c) *Measurement of Restriction*. 18 U.S.C. 207(c) is a one-year restriction. The one-year period is measured from the date when the employee ceases to be a senior employee, not from the termination of Government service, unless the two occur simultaneously.

(d) *Waiver of 18 U.S.C. 207(c)*. Certain positions or categories of positions can be exempted from 18 U.S.C. 207(c) through the grant of a waiver by the Director of the Office of Government Ethics. 18 U.S.C. 207(c)(2)(C).

(1) *Effect of Exemption*. When an eligible position is exempted from 18 U.S.C. 207(c) by the Director of the Office of Government Ethics, the one-year restriction of section 207(c) will not be triggered upon any employee's termination from the position.

(2) *Eligible Senior Employee Positions*. Any senior employee position is eligible for exemption except the following:

- (i) Positions for which the rate of pay is specified in or fixed according to 5 U.S.C. 5311-5318 (the Executive Schedule);

- (ii) Positions whose occupants are appointed by the President pursuant to 3 U.S.C. 105(a)(2)(B); or

- (iii) Positions whose occupants are appointed by the Vice President pursuant to 3 U.S.C. 106(a)(1)(B).

(3) *Procedure*. An exemption shall be granted in accordance with the following procedure:

- (i) *Initial Exemption*. An agency's designated agency ethics official shall forward to the Director of the Office of Government Ethics a written request that a certain senior employee position or category of positions be exempted from 18 U.S.C. 207(c). Any such request shall address the criteria set forth in paragraph (d)(5) of this section. A designated agency ethics official may also request that a current exemption be revoked.